

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

PETER WASKO,

Plaintiff,

v.

RANDALL D. MOORE,

Defendant.

04 FEB - 9 PM 3:16 *AT*

CIV 03-1026 BB/RLP

**DEFENDANT'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

COMES NOW the Defendant, Randall Moore, by and through its undersigned counsel, Simons & Slattery, LLP, and for his Proposed Findings of Fact and Conclusions of Law states:

**FINDINGS OF FACT**

1. On June 11, 2001, the *pro se* Plaintiff filed a lawsuit in the First Judicial District of Santa Fe County, State of New Mexico, alleging damages as a result of an automobile collision. The matter is captioned *Peter Wasko v. Randall D. Moore* and bears D-0101-CV-2001-01411 (hereinafter "state matter.")

2. The First Judicial District Court has entered various orders with which Plaintiff takes issue including an order involuntarily dismissing the state action for failure to prosecute.

3. Plaintiff unsuccessfully sought reconsideration from the First Judicial District, appealed to the New Mexico Court of Appeals and petitioned for a writ of certiorari with the New Mexico Supreme Court.

4. Plaintiff, having failed to obtain reconsideration from the First Judicial District Court, filed the above-captioned matter on September 5, 2003.

5. Since filing the above-captioned matter, the New Mexico Court of Appeals has affirmed the rulings of the First Judicial District Court and the New Mexico Supreme Court has denied Plaintiff's petition for writ of certiorari.

6. Plaintiff brought the above-captioned matter for the improper purpose of harassment, in an effort to delay further proceedings in the state matter, and to increase Defendant's costs of litigation.

7. Plaintiff's claims in the above-captioned matter are unwarranted by existing law and frivolous

#### CONCLUSIONS OF LAW

1. This Court lacks jurisdiction to engage in direct review and collateral attack of action taken by the First Judicial District Court for the State of New Mexico.

2. Plaintiff's complaint fails to state a constitutional claim or any claim under 42 U.S.C. Sec. 1983.

3. Plaintiff's filing of the above-captioned matter violates the pleading requirements of Fed. R. Civ. P. 11 and Plaintiff shall be liable for Defendant's reasonable attorneys fees and costs associated with the above-captioned matter.

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By: 

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Attorneys for Defendant Randall D. Moore

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed to Peter Wasko, pro se, at 1307 Declovina St., Santa Fe, New Mexico 87505 on this 9th day of February, 2004.

  
CHRIS ROMERO